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State v. Cuellar Appellant's Brief Dckt. 43424

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43424
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY NO. CR 2014-8373
v.)	
)	
TONY TOMAS CUELLAR,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

A jury found Tony Cuellar guilty of two counts of trafficking in marijuana and one count of conspiracy to traffic in marijuana, and the district court sentenced him on each count to concurrent terms of seven years, with two years fixed. Mr. Cuellar asserts that the district court abused its discretion by imposing an excessive sentence in light of the mitigating factors that exist in his case. Furthermore, Mr. Cuellar asserts that the district court abused its discretion by denying his Rule 35 motion requesting leniency.

Statement of the Facts & Course of Proceedings

Devin Guardiola sold marijuana on multiple occasions to an undercover Idaho State Police detective and, after initially telling investigators that Tony Cuellar had

nothing to do with the sales, Mr. Guardiola claimed that Mr. Cuellar was his marijuana source and agreed to testify against him as part of a plea agreement. (Tr., p.404, L.8 – p.416, L.14; p.498, L.19 – p.579, L.6.)¹ A grand jury issued an indictment charging Mr. Cuellar with aiding and abetting Mr. Guardiola in two counts of delivery of marijuana, two counts of trafficking in marijuana by possession of one pound or more, and one count of conspiracy to traffic in marijuana. (R., pp.15-19.)

On the night Mr. Guardiola and Mr. Cuellar were arrested, Mr. Guardiola had a backpack in his possession containing over one pound of marijuana – a backpack that officers did not see in his possession when he entered Mr. Cuellar’s car earlier that night. (Tr., p.238, L.12 – p.243, L.24; p.315, L.2 – p.317, L.8.) Mr. Cuellar testified on his own behalf and denied any involvement in Mr. Guardiola’s drug operation. (Tr., p.632, L.11 – p.678, L.9.) The jury found Mr. Cuellar not guilty of the two delivery charges, but found him guilty of the two trafficking charges and the conspiracy charge. (R., pp.296-297.)

During the sentencing hearing, the State requested that the district court impose concurrent unified terms of ten years, with three years fixed, while counsel for Mr. Cuellar asked the court to impose concurrent unified terms of five years, with one year fixed. (Tr., p.784, Ls.17-25; p.790, Ls.2-8.) The district court imposed concurrent unified terms of seven years, with two years fixed, and Mr. Cuellar filed a timely Notice of Appeal. (R., pp.383-388, 400-403; Tr., p.798, Ls.1-6.) Mr. Cuellar also filed a timely Rule 35 motion with supporting documentation, seeking a reduction of his fixed time to

¹ All citations to transcripts in this brief will be to the 800-page volume memorializing the bulk of the trial and the sentencing hearing.

the mandatory one-year term. (R., pp.419-430.) The district court denied the motion. (R., pp.436-440.)

ISSUES

1. Did the district court abuse its discretion when it imposed upon Mr. Cuellar concurrent unified terms of seven years, with two years fixed, in light of the mitigating factors that exist in his case?
2. Did the district court abuse its discretion when it denied Mr. Cuellar's Idaho Criminal Rule 35 Motion for a Reduction of Sentence in light of the new and additional information he offered in support of his motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed Upon Mr. Cuellar Concurrent Unified Terms Of Seven Years, With Two Years Fixed, In Light Of The Mitigating Factors That Exist In His Case

Mr. Cuellar asserts that, given any view of the facts, his concurrent unified terms of seven years, with two years fixed, are excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, "[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence." *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Cuellar does not allege that his sentences exceed the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Cuellar must show that in light of the governing criteria, the sentences

are excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Tony Cuellar is an impressive young man who has a bright future ahead of him. During the summer before his senior year in high school, Mr. Cuellar learned he was going to become a father. (PSI, p.37.)² Unlike far too many young men in that situation, Mr. Cuellar made a plan to both improve himself and to take care of his child. (PSI, p.37.) He enrolled in a dual credit course that allowed him to become a Certified Nursing Assistant, and he was able to graduate from high school while working a full-time job. (PSI, p.37.) Mr. Cuellar was such a good student that he earned a scholarship in the amount of \$61,600 to the College of Idaho; however, he chose to attend the College of Southern Idaho instead so that he could be a father to his young son. (PSI, p.37.) He graduated from CSI with an Associate's Degree just prior to being sentenced in this case. (PSI, p.15.)

By the time he was sentenced, Mr. Cuellar had a second child and was engaged to be married, and he was just 22 years-old. (PSI, pp.8, 14-15.) He enjoys the strong support of his parents, who wrote a letter in support of him, and these are his only

² Citations to the Presentence Investigation Report in this brief will include the page numbers associated with the electronic file containing those documents.

felony convictions. (PSI, pp.13-14, 37-38.) Mr. Cuellar recognized that he made the worst mistake of his life being involved in these crimes, expressed his regret for the decisions he made, and he agonized over the realization that the choices he made will result in him being away from his family. (PSI, pp.11-12, 19; Tr., p.790, L.18 – p.791, L.3.) However, Mr. Cuellar resolved that he will not let his situation bring him down, and that he is going to stay positive and come out of prison ready to get back to work and pursue more education, so that he can take care of his kids the best way he can. (Tr., p.791, Ls.4-11.)

Idaho Courts recognize that youthful, first-time offenders, who express regret for their actions and are amenable to rehabilitation, should be granted leniency. Mr. Cuellar asserts that, in light of the mitigating factors that exist in his case, the district court abused its discretion by imposing an excessive sentence.

II.

The District Court Abused Its Discretion When It Denied Mr. Cuellar's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence In Light Of The New And Additional Information He Offered In Support Of His Motion

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994), (citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* (citing *Lopez*, 106 Idaho at 450). “If the sentence was not excessive when pronounced, the defendant must later show that it is

excessive in view of new or additional information presented with the motion for reduction. *Id.* (citing *State v. Hernandez*, 121 Idaho 114 (Ct. App. 1991)).

In support of his Rule 35 motion, Mr. Cuellar wrote a letter to the court expressing that he has learned a lot during the time he has been in prison including how his actions negatively affected his family, and he reiterated his desire to better himself upon his release. (R., pp.423-424.) He also included a letter from Jennifer Brown, his former supervisor at the Bridgeview Estates, where Mr. Cuellar worked as a CNA, who stated that Mr. Cuellar is “a great person with a wonderful attitude” and that he had “a caring way about him” in how he treated the residents and his co-workers. (R., p.425.) Manuel Flores, the operator of a boxing gym in Twin Falls, noted that he knew Mr. Cuellar since he was 10 years-old, and that he has had a positive impact on the community. (R., p.429.) Finally, Jason Eggers, Mr. Cuellar’s supervisor at the slaughter house he worked at after he was arrested and no longer able to work as a CNA, wrote that Mr. Cuellar was a reliable team-player, who is eligible for re-hire and who could advance in the company. (R., p.430.) In light of the new information demonstrating Mr. Cuellar’s new insight into the impact of his crimes, and the letters of support from employers and community members, Mr. Cuellar asserts that the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

Mr. Cuellar respectfully requests that this Court reduce his sentences to concurrent terms of seven years, with one year fixed, or for whatever relief this Court deems appropriate.

DATED this 28th day of April, 2016.

_____/s/_____
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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DISTRICT COURT JUDGE
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_____/s/_____
EVAN A. SMITH
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JCP/eas